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THE LANGDELL Number of the REVIEW is an expression of the debt owed to Professor Langdell by his colleagues; the meeting of the Harvard Law School Association this June will be an expression of the debt owed to him by the graduates of the School, and, from the presence of the distinguished orator of that occasion, of the debt owed by all law and lawyers. It may not be amiss to complete the record by saying something of the special debt owed to him by the students in the School. It is not easy for a man who has studied here even for a little while to be ignorant that the unexampled means of study which lie ready at his hand are not matters of course. It is worth each man's while to remember now in the time of his present enjoyment that all these things are owed directly or indirectly to the Dean and to his twenty-five years of hard work; his has been the moving hand, his the responsibility, and to him credit is due. This is an occasion when the present students may recognize their obligation for all these causes which have made it such a very pleasant and profitable labor to be a student in the School. The Editors of the REVIEW speak confidently for all in expressing the gratitude which the students in the School feel for all the great things which they enjoy because Dean Langdell has done his work so well.

BY a clerical error it was stated in the May number of the REVIEW that the celebration of the Harvard Law School Association would occur on June 28. This should have been June 25, the day before Commencement, which comes this year on June 26.

THE PRESUMPTION OF INNOCENCE. — In a criminal case, recently before the United States Supreme Court, a refusal to charge that innocence is presumed till guilt is proved beyond a reasonable doubt was held erroneous, notwithstanding that the court charged fully and accurately that the burden was on the prosecution to prove guilt beyond a reasonable doubt. *Coffin*

v. *United States*, 15 Sup. Ct. Rep. 394. Mr. Justice White, who delivered the opinion of the court, lays down the principle that a presumption is, of itself, evidence, while the doctrine of reasonable doubt applies only to the effect of the evidence, and therefore to say that the one is the equivalent of the other is to say that the exclusion of an important piece of evidence can be justified by charging correctly as to that part which is not excluded.

The definition of a presumption as evidence is, perhaps, not perfectly consistent with the definition of evidence as a "matter of fact to be used as a basis of inference to another matter of fact" (3 HARVARD LAW REVIEW, 142). And the presumption of innocence, however it be defined, does not seem as clear and satisfactory in its nature and effect as do presumptions in general. It is easy to understand the nature and effect of all presumptions in favor of facts which would otherwise have to be proved. Such presumptions are an alleviation of proof, the *levamen probationis* of the Roman law, and their effect is to throw upon the opposite party the duty of going forward with evidence. Thus if it is necessary for a prosecutor to prove the sanity of a prisoner, or for a plaintiff to prove the immemorial antiquity of a custom, the presumption comes to his assistance, he is relieved of the duty of proving a part of his case, he has thrown upon his adversary the duty of going forward with evidence. But the presumption of innocence seems to be wholly different in its nature and effect. It is not an alleviation of proof, because the prisoner has no duty to prove innocence, nor does it throw upon the opposite party the duty of going forward with evidence, for that duty is already upon the opposite party by the merciful requirement of the criminal law that the prosecution shall prove guilt, and prove it beyond a reasonable doubt. What, then, is the significance of the presumption of innocence? Text-writers of distinction and one or two courts (Chamberlayne's Best on Ev. 1893, p. 309; 1 Stephen, Hist. Crim. Law, p. 438; *Moorehead* v. *State*, 34 Oh. St. 212; *People* v. *Potter*, 89 Mich. 353; *People* v. *Graney*, 91 Mich. 646) have believed that the expression means nothing more than that the burden of proof is on the prosecution to establish the prisoner's guilt beyond a reasonable doubt. The anomalous nature of the so-called presumption, its uncertain effect on the case, the ample protection afforded the prisoner by the burden of proof on the prosecution, and the fact that the presumption is said to be rebutted only by proof beyond a reasonable doubt, are among the considerations which have led to this belief. Mr. Justice White is of opinion that those who entertain it have failed to discriminate properly.

The actual decision is merely that a point-blank refusal to charge that there is a presumption of innocence, is error. In so far as this means that the refusal, if unexplained, might mislead the jury and prejudice them against the prisoner, it would perhaps be assented to even by the courts and text-writers, who deny the distinction between the presumption of innocence and the duty of establishing. The prisoner is clearly entitled to have the jury understand that there is no presumption of guilt. But it does not seem necessarily to follow that there is a presumption of innocence. It may well be that there is no presumption at all, and if there is one, its effect on the case would seem to be too indefinite and misty to make it of much practical assistance to a jury.